***United States Court of Appeals***

***for the Second Circuit***

# APPELLANT'S APPENDIX

77-1078

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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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Docket No. 77-1078

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UNITED STATES OF AMERICA — APPELLEE

V.

PAULINE A. STEBBINS — APPELLANT

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On Appeal From the U. S. District Court for the District of Vermont

[Criminal, No. 76-63-1]

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APPENDIX TO APPELLANT'S BRIEF

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UNITED STATES COURT OF APPEALS
FILED
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INDICTMENT

The Grand Jury charges:

1. On or about October 4, 1975, in the District of Vermont, PAULINE A. STEBBINS, the defendant, having duly taken an oath that she would testify truthfully, and while testifying in a proceeding before the May, 1975 grand jury, a grand jury of the United States, duly empaneled and sworn in the United States District Court for the District of Vermont, did knowingly make false material declarations as hereinafter set forth.

2. At the time and place alleged, the May, 1975 grand jury of the United States District Court for the District of Vermont, was conducting an investigation in conjunction with the United States Attorney's Office for the District of Vermont and the Federal Bureau of Investigation to determine whether violations of Title 18, United States Code, §§ 371 (conspiracy) and 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), and other statutes of the United States and of the State of Vermont had been committed in the District of Vermont and elsewhere and to identify the individual or individuals who had committed, caused the commission of, and conspired to commit such violations.

3. It was material to the said investigation that

the said grand jury ascertain:

a. Whether PAULINE A. STEBBINS or any other person acting on her behalf made a payment of money to Attorney Frank Fucci in connection with a case against her son William Stebbins entitled State of Vermont v. William Stebbins, District Court of Vermont, Unit #6, Windsor Circuit, Docket No. 764-73WrC, which payment of money was intended to be used in whole or in part to bribe an official of the State of Vermont to obtain more favorable treatment for her son in the above-captioned case.

b. Whether PAULINE A. STEBBINS, on or about May 22, 1973 possessed $10,000, and if so possessed, whether the $10,000 was in whole or in part the proceeds of a business enterprise of William Stebbins or any other person involving narcotics or controlled substances in violation of the laws of the United States.

c. Whether PAULINE A. STEBBINS or any other persons had travelled in interstate or foreign commerce or used any facility in interstate or foreign commerce, including the mail, with intent to distribute the proceeds of the bribery referred

to in ¶ a. or the business enterprise referred to in ¶ b., or had travelled in interstate or foreign commerce with intent to otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of the bribery referred to in ¶ a. or the business enterprise referred to in ¶ b.

d. The identity of any person(s) who had conspired to commit, participate in or aided, abetted, counseled, commanded, induced or procured the commission of the activities referred to in ¶¶ a., b. and c., as well as the means of commission of such acts.

4. At the time and place alleged, PAULINE A. STEBBINS, the defendant, appearing as a witness under oath at a proceeding before the said grand jury, did knowingly declare with respect to the material matters alleged in ¶3 as follows:

-A- Q. Have you from time to time given your son William quantities of money to assist him in living?

A. No

* * *

Q. Have you ever assisted your son through the payment of legal fees or putting up

bond for him if he's ever been in any difficulty?

A. I don't recall paying any legal fees for him. I remember putting up bail for him. I believe just once. Yes, just once, I think.

* * *

Q. Have you ever paid lawyer's fees on your son's behalf?

A. No, I never have.

Q. How does your son William pay his legal fees during times he's been --

A. That is something you'll have to ask William. He's 29 years old, and what legal fees he has, he has to take care of, not me.

Q. I take it what you're saying is you don't know how he pays his legal fees; is that a fair statement?

A. No, I do not know how he pays his legal fees.

Q. You have never paid any legal fees on his behalf?

A. If I've paid any legal fees on his be-

half, it would be minor things, traffic violations. Lawyers, no.

* * * *

-B- Q. Do you recall your son being arrested in, I believe it was White River Junction and charged with assault on an individual, and the charge was later reduced to simple assault?

A. I don't see that this has anything to do with narcotics.

Q. Would you answer the question, please? Do you recall an incident whereby your son was arrested on a charge of aggravated assault, a stabbing, and it was reduced to a simple assault?

A. That he was arrested in White River Junction?

Q. Yes. Do you have a focus on that particular incident in your mind?

A. He was never arrested in White River Junction on such a charge.

Q. Do you recall a time, irrespective of where he was actually arrested, as to when he was arrested and charged with an aggravated assault resulting from a stabbing and that

charge later reduced to simple assault? Do you recall that incident?

A. I recall the incident but he was never arrested for it.

Q. Disregarding the arrest, do you recall the incident that he was alleged to have been involved with?

A. I recall the incident where he was alleged to be involved with it.

Q. He was alleged in that instance to have stabbed or cut someone by the name of Hall, is that -- I'm trying to focus to make sure we're --

A. There was only one incident.

Q. I take it it was involving a gentleman by the name of Hall; is that right?

A. I don't know what the boy's name was.

Q. Did you pay any legal fees r post any bail for your son in that incident?

A. No.

Q. Did you make any payments to anyone in connection with the stabbing incident on behalf of your son?

A. No.

Q. Did you pay the sum of five or ten thousand

dollars to a Mr. Fucci, F-u-c-c-i, in connection with the stabbing incident in White River Junction?

A. No, I certainly did not.

Q. Have you ever paid any legal fees to Mr. Fucci?

A. Have I ever paid any legal fees to Mr. Fucci? Which Mr. Fucci?

Q. Any of the Mr. Fuccis. I believe there are three of them.

A. In the last three or four years?

Q. Yes, Ma'am. Let's say since 1970.

A. Since 1970. No, I don't believe I have.

Q. Have you paid any -- specifically, have you paid any legal fees to Mr. Frank Fucci?

A. No.

Q. Have you paid to Mr. Fucci any quantities of cash during that period of time?

A. No.

Q. Mr. Frank Fucci.

A. I haven't paid him anything.

* * *

-C- Q. I take it for any purpose that you've never

transferred to him, other than legal fees or for any purpose, you have not transferred to him any quantities of cash during that period of time.

A. No. I'm in business, I don't pay by cash.

* * *

-D- Q. In connection with the stabbing incident, do you recall Mr. Frank Fucci having been employed as counsel for your son William during that period of time?

A. Yes, I do.

Q. And how did he obtain the services of Mr. Fucci? Do you know?

A. How did he what?

Q. How did he happen to get Mr. Fucci as a lawyer?

Do you know?

A. No, I don't know why he got Mr. Fucci, only except maybe he knows him.

Q. I take it that you did not hire Mr. Fucci on behalf of your son.

A. No, I didn't hire him.

Q. You're sure about that?

A. I'm positive about that.

Q. It's also your testimony that you did not pay any funds of any type to Mr. Fucci on behalf of your son William in connection with that incident; is that correct?

A. I didn't pay the funds to him, whatever he got.

* * *

-E- Q. It is your testimony that you have never paid any legal fees or any other monies to anyone --

A. I've never -- if I've paid any legal fees for William Stebbins, they would be minor things, and they would be probably years back, when he was in high school, or in college, minor things. If you mean have I passed out thousands of dollars to keep my son out of trouble, no, I have not done that. I don't intend to now, and I never will, and neither will his father.

Q. I take it that if you paid any legal fees on behalf of your son in the past that they were relatively small amounts.

A. They wouldn't be anything connected with whatever you're trying to get here.

Q. You paid no legal fees or other fees of any type to anyone on behalf of your son William in connection with that stabbing incident?

A. No, I certainly did not.

* * *

-F- Q. Did you pay $10,000 to Mr. Frank Fucci in cash on May 22, 1973?

A. No, I sure did not. Why don't you call Mr. Fucci's office and get him into court?

* * *

-G- Q. In addition, you've indicated you did not pay $10,000 in cash to Mr. Frank Fucci on on May 22, 1973.

A. That is right.

Q. Would it also be correct to state that you did not either through someone else or something of this nature transmit $10,000 to Mr. Fucci on about that same date?

A. You are right in saying that I did not.

* * *

-H- Q. But you did not pay Mr. Frank Fucci $10,000 in 1973 for -- by any means, I take it.

A. By any means, I sure didn't.

* * *

-I- Q. Do you know how your son's legal fees were paid in that instance?

A. I don't know how he paid them, his legal fees, but they evidently were paid, because you think I did.

The underscored portions of the declarations quoted in each of the specifications above, made by PAULINE A. STEBBINS, the defendant, were material to the said investigation, and as she then and there well knew, were false in that:

a. On May 22, 1973, PAULINE A. STEBBINS paid and delivered $10,000 in cash to Frank Fucci.

b. The payment of $10,000 by PAULINE A. STEBBINS on May 22, 1973 was understood by the parties to be a legal fee for services rendered and to be rendered on behalf of the son of PAULINE A. STEBBINS, William Stebbins, in connection with the case of State of Vermont v. William Stebbins, District Court of Vermont, Unit #6, Windsor Circuit, Docket No. 764-73WrC.

(in violation of 18 U.S.C. § 1623)

A TRUE BILL

/s/ William W. Stone
Foreman

GEORGE W. F. COOK
United States Attorney

By /s/ Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U. S. Attorney

November 9, 1976
(Burlington)

* * * * * * * * * * * * * * * * * *

MOTION FOR DISCOVERY
UNDER RULE 16

NOW COMES the Defendant, Pauline A. Stebbins, by and through her attorneys, Stebbins & Bradley, P.A., and, pursuant to Federal Rules of Criminal Procedure, Rule 16, moves:

1. That the Government permit the Defendant, through counsel, to inspect and copy or photograph: any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the Defendant whether before

or after arrest or arraignment in response to interrogation by any person then known to the Defendant to be a government agent; and recorded testimony of the Defendant before any grand jury other than the May 1975 grand jury for the District of Vermont or before the May 1975 grand jury for the District of Vermont to the extent that such recorded testimony has not already been disclosed to counsel for the Defendant by the Assistant U. S. Attorney on 23 September 1976.

2. That the Government furnish to the Defendant such copy of her prior criminal record, if any, as is within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government.

3. That the Government permit counsel for the Defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the Government, and which are material to the preparation of the Defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the Defendant.

4. That the Government provide the Defendant,

through counsel, with a list of the names and addresses and employers (to the extent known by the Government) of all persons who will be or may be called by the Government as witnesses against the Defendant; and that the Government be required to continually update the Defendant, through counsel, of any additions to or deletions from said list before the time of trial.

5. That the Government permit the Defendant, through counsel, to inspect and copy of photograph any examination reports or test reports as specified in F.R.Cr.p. Rule 16(a)(1)(D).

MEMORANDUM

With the exception of Paragraph Number 4, the foregoing Motion requests that discovery which is provided for by Rule 16 (18 U.S.C.A. Rule 16). With respect to Paragraph Number 4 of the foregoing Motion, it is respectfully submitted that, in light of the nature of the offenses alleged in the Indictment, no potential witness should be placed in any jeopardy if his or her name were to be disclosed to the Defendant prior to the date of trial. The circumstances of this particular case are such that the Defendant's need for the list of witnesses outweights the government's need for confidentiality and for security of its witnesses. U.S. v. Villa, D.C. Conn. 1974, 370 F.Supp.

515. Additionally, it will be useful for the Defendant to have access to the information in connection with the preparation of her case for trial. U.S. v. Leichtfuss, D.C. Illinois 1971, 331 F.Supp. 723. The Court has the right to order the government to furnish the Defendant with a list of its prospective witnesses and it has been held that it is not necessary for the Defendant to make a showing of materiality and reasonableness. U.S. v. Jackson, C.A. Illinois 1975, 508 F2d 1001.

Respectfully submitted,

PAULINE A. STEBBINS

BY: STEBBINS & BRADLEY, P.A.
Her Attorneys

BY: /s/ John J. Long, Jr.
John J. Long, Jr.

Dated 24 September 1976

* * * * * * * * * * * * * * * * *

RESPONSE TO MOTION FOR DISCOVERY UNDER RULE 16
and
MEMORANDUM OF POINTS AND AUTHORITIES

The UNITED STATES OF AMERICA, by and through George W.F. Cook, United States Attorney for the District of Vermont, hereby responds to the "Motion for Discovery Under

Rule 16" filed by defendant in the above-captioned case.

1. The United States is willing to make available for discovery and inspection all materials provided pursuant to Rule 16 of the Federal Rules of Criminal Procedure. The Government conditions any such discovery upon reciprocal discovery by the defendant of materials to which they are entitled under Rule 16.

2. The Government declines to make available a list of witnesses together with their names and addresses on the ground that the defendant has not shown the required materiality and reasonableness as set out by the United States Court of Appeals for the Second Circuit in United States v. Cannone, 528 F.2d 296 (2d Cir. 1975). The Government respectfully submits that the particular nature of the grand jury indictment indicates a deceitful and dishonest action by the defendant which was intended to subvert the investigatory process of the grand jury. Under the circumstances the Government submits that this finding of probable cause by the grand jury alone is sufficient for the Court to deny the defendant a witness list under United States v. Cannone.

Dated at Rutland, in the District of Vermont, this

29th day of September, 1976.

GEORGE W. F. COOK
United States Attorney

By: /s/ Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U. S. Attorney

* * * * * * * * * * * * * * * *

OPPOSITION TO MOTION TO TAKE DEPOSITION
and
MEMORANDUM OF POINTS AND AUTHORITIES

The UNITED STATES OF AMERICA, by and through George W.F. Cook, United States Attorney for the District of Vermont, hereby states its opposition to the motion of defendant Pauline A. Stebbins to take the deposition of Frank R. Fucci in the above-captioned case. In support of this postiion the Government submits the following points and authorities.

Rule 15(a) of the Federal Rules of Criminal Procedure provides in relevant part as follows:

> Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition . . . .

Defendant apparently has premised her motion to take the deposition of Frank R. Fucci upon the above-quoted portion of Rule 15, but the Government strongly submits that the motion to take deposition is solely for discovery purposes and is not in keeping with the above-quoted language. Rule 15 requires that there be (1) exceptional circumstances, (2) that it be in the interest of justice, and (3) that the prospective witness be that of the party seeking to depose the individual. Defendant meets none of these criteria with her motion.

On this respect it is first noteworthy that the House Judiciary Committee in Report No. 94-247 noted specifically that Rule 15(a)'s amendment was intended to allow a party to take the deposition of one of its own witnesses, but not that of an adverse party's witness. Further, the notes of the Advisory Committee on the Federal Rules of Criminal Procedure indicate that the 1974 amendments to Rule 15 were intended to allow the Government to take depositions where it had not previously been allowed to except under 18 U.S.C. § 3503. There is nothing in the Advisory Committee notes nor in any of the legislative history of the amendments which would indicate that Rule 15 is intended to be used by a party to depose the witnesses of the adverse party. Rule 15 in fact is specifically to the contrary, and

of course Rule 16 is the rule relating to discovery. Defendant is well aware in this particular case that should something happen to Frank Fucci which would prevent him from testifying at the trial of Pauline A. Stebbins the Government would find it virtually impossible to convict Pauline A. Stebbins. The Government has indicated unequivocally that it intends to call Frank Fucci as a witness, and as such he is a witness for the Government under Rule 15.

Defendant also has failed to show what exceptional circumstances are present or why it is in the interest of justice that Frank Fucci's testimony be taken by deposition. If the Government believed and could show that it was likely Mr. Fucci would not survive until the trial it would move for the taking of his testimony by deposition. The affidavit attached to defendant's motion of Frank R. Fucci hardly indicates that it is unlikely he will be unable to attend the trial, but rather suggest that it would be "beneficial" if his deposition were taken prior to trial. The vagueness of the affidavit speaks to its insufficiency.

The Government submits that the defendant has failed to in any manner show that she is entitled to take the deposition of Frank R. Fucci pursuant to Rule 15 and the motion should be denied.

Dated at Burlington, in the District of Vermont, this 12th day of October, 1976.

UNITED STATES OF AMERICA

GEORGE W. F. COOK
United States Attorney

By: /s/ Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U. S. Attorney

* * * * * * * * * * * * * * * * *

MOTION TO PRODUCE ROUGH NOTES
UNDER FEDERAL RULES OF CRIMINAL
PROCEDURE, RULE 16, AND 18 USC §3500

NOW COMES the Defendant, Pauline A. Stebbins, by and through her attorneys, Stebbins & Bradley, P.A., and says:

1. That the Government, pursuant to Federal Rules of Criminal Procedure, Rule 16, has furnished Defendant with a copy of the typed notes of Special Agent Albert O. Axten and Special Agent John E. Hess, of an interview with the Defendant on 7 January 1976.

2. That the Government has not furnished the Defendant with copies of any "rough" notes or field notes taken by either Special Agent at the time of the 7 January 1976 interview.

3. That such "rough" notes or field notes taken at the time of the 7 January 1976 interview are potentially discoverable under Federal Rules of Criminal Procedure, Rule 16, and under 18 USC §3500.

4. That the typed notes furnished the Defendant indicate the following statement, in substance, but not verbatim, of the Defendant:

> She stated that the fee of $10,000.00 which was paid to FUCCI was provided by JOSEPH LEARY and was in cash and that she had given the money to FUCCI. She stated that she had denied that she had paid the money and that this was the truth.

That said statement is ambiguous on its face as to which alleged statement "was the truth."

5. That the failure to provide the Defendant with copies of the "rough" notes or field notes taken at the time of the 7 January 1976 interview denies the Defendant any meaningful inquiry into possible discrepancies between the original impressions and conversations of the Special Agents and the more studied description of the interview contained in the report furnished the Defendant.

6. That the failure to provide the Defendant with copies of the "rough" notes or field notes taken at the time of the 7 January 1976 interview results in a lack of full disclosure of all statements made by the Defendant, and in the possession of the Government.

7. That to permit either or both of Special Agents Axten and Hess to testify before permitting the Defendant access to "rough" notes or field notes of Defendant's statements is to deny Defendant her constitutional right to meaningfully cross-examine the witnesses against her, to present all evidence which might be favorable to her, and to have the Court, in exercise of its judicial responsibilities, rule on the admissibility of evidence, all denying Defendant a fair trial.

WHEREFORE, the Defendant moves:

A. That this Court order the immediate production and delivery to the Defendant of copies of all "rough" notes or field notes of Special Agents Axten and Hess of an interview with the Defendant on 7 January 1976, no later than 4:00 p.m. on Friday, 26 November 1976.

B. That in the event the Government refuses or fails to produce and deliver the "rough" notes or field notes requested in Prayer A, that this Court prohibit any testimony by Special Agents Axten and Hess as to any conversations with the Defendant.

C. Grant such further relief as it may deem just and proper.

MEMORANDUM.

The Government has provided the Defendant with the

summary, as prepared by Special Agents Axten and Hess, of the 7 January 1976 interview with the Defendant. It is clear that both the verbatim statements of the Defendant and summaries of conversations memorialized after the fact are not distinguishable and are discoverable. U.S. v. Johnson (CA2, 1975) 525 F2d 999 at 1004. The Government must comply strictly with orders to produce the Defendant's statements and such discovery must not be restricted in a niggardly fashion. U.S. v. Johnson, supra, at 525 F2d 1005.

If recordings of the Defendant's oral statements would be statements discoverable under Rule 16, see U.S. v. Crisona (CA2, 1969) 416 F2d 107, then an Agent's "rough" notes or field notes, as contemporaneous or nearly contemporaneous with the Defendant's statements, must be similarly considered discoverable.

A lengthy analysis of the standard procedures of the FBI in connection with routine destruction of "rough" notes or field notes after summary reports have been prepared, and the adverse effects upon the Defendant's right to a fair trial, is found in the opinion of Judge J. Skelly Wright in U.S. v. Harrison, (Ca DC, 1975) 524 F2d 421. In that case it was held that FBI "rough" notes or field notes must be preserved in order to preserve information or leads which would be of use to the defendants on the merits of the

case and to provide valuable information for potential impeachment of witness credibility. In addition to the provisions relating to Rule 16, disclosure of a defendant's own statements, Judge Wright pointed out the obvious applicability of 18 USC §3500 (the Jencks Act) and the probable applicability of Brady v. Maryland, 373 US 83, 83 SCt 1194, 10 LEd2d (1963).

We do not have overwhelming evidence of the Defendant's guilt so that failure to penalize the Government for neglect or failure to produce "rough" notes or field notes in connection with the testimony of Agents Axten or Hess could be classified as "harmless error" or "lacking prejudice." In Johnson, supra, The Court found that the Government had acted improperly with relation to a statement by the defendant, but pointed out that the defendant had made three other admissible, vastly inculpatory statements, indicating a clear lack of prejudice. In Harrison, supra, the Court found that preserved and disclosed rough notes of local police obviated prejudice to the defendant, but warned that full sanctions, of exclusion of testimony relative to the statements, would be involved if the FBI did not modify its practices.

We have only the testimony of Frank Fucci, other than the alleged statement to Agents Axten and Hess, to

support the Government's indictment. Special care is required where a clear preponderance of the evidence does not exist independent of the statement to the Agents.

As forcefully stated in U.S. v. Harris, (CA9, 1976) 20 CrL 2049,

> Since the routine disposal of potentially producible materials by the FBI amounts to a usurpation of the judicial function of determining what evidence must be produced in a criminal case, we hold that such original or rough interview notes must be preserved.

The effect of foreclosing any meaningful inquiry into possible discrepancies between the original impressions of the Agents in their conversation with Mrs. Stebbins and their more studied description of the interview, as summarized in the report furnished the Defendant, is obvious.

Respectfully submitted,

PAULINE A. STEBBINS

By: STEBBINS & BRADLEY, P.A.
Her Attorneys

Dated: 26 November 1976

By: /s/ John J. Long, Jr.
John J. Long, Jr.

* * * * * * * * * * * * * * * * * *

MEMORANDUM WITH RESPECT TO 18 U.S.C. § 3500
AND THE DESTRUCTION OF AGENT NOTES

The UNITED STATES OF AMERICA, by and through George W.F. Cook, United States Attorney for the District of Vermont, hereby submits the following memorandum on the above-captioned subject. The Government believes this memorandum may be helpful to the Court since it has reason to believe that defendant STEBBINS will file motions related to the above subject before the Court on Nov. 26.

The leading case on the subject of destruction of notes is Killian v. United States, 368 U.S. 231, 240-43 (1961). In that case the court noted in part as follows:

> If the agents' notes. . .were made only for the purpose of transfering the data thereon to the receipts to be signed by Ondrejka, and if, after having served that purpose, they were destroyed by the agents in good faith and in accord with normal practice, it would be clear that their destruction did not constitute destruction of evidence nor deprive petitioner of any right.

Id. at 242. The Supreme Court further stated in Killian:

> It is entirely clear that petitioner would not be entitled to a new trial because of the non-production of the agents' notes if those notes were so destroyed and not in existence at the time of trial.

Id. In United States v. Covello, 410 F.2d 536 (2d Cir. 1969) FBI agents pursuant to customary practice had destroyed their handwritten notes after incorporating them into typewritten reports. The Court noted as follows:

> Absent an indication that the notes were destroyed for improper purpose or that the handwritten data was not preserved in the formal reports the reports satisfy the requirements of § 3500.

Id. at 545, citing, inter alia, United States v. Williams, 384 F.2d 448, 493 (2d Cir.), cert. denied, 385 U.S. 836 (1966); United States v. Jones, 360 F.2d 92, 95 (2d Cir.), cert. denied, 385 U.S. 1012 (1966); United States v. Comulada, 340 F.2d 449, 451 (2d Cir.), cert. denied, 380 U.S. 978 (1965). See United States v. Terrell, 474 F.2d 872, 876 (2d Cir. 1973); United States v. Thomas, 282 F.2d 191, 194 (2d Cir. 1960).

The Government submits that it is this belief that the agents who will testify and concerning whom 3500 material is to be produced either did not take notes or destroyed their notes in accord with normal practice. It should be noted however that in some instances such destroyed notes would not have been "statements" subject to production under the statute even if available. See United States v. Crosby, 294 F.2d 928 (2d Cir. 1961), cert. denied, 368 U.S. 984 (1962).

DATED at Rutland, in the District of Vermont, this 26th day of November, 1976.

UNITED STATES OF AMERICA

George W.F. Cook
United States Attorney

By: /s/ Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U.S. Attorney

* * * * * * * * * * * * * * * *

A. In Montpelier, Vermont.

Q. This would be after you had returned to your station?

A. Yes.

Q. There were no notes taken at the time, just from your recollection?

A. That's correct.

Q. Now, I point out to you two sentences which I'd like you to read. Tell me if they are correct. Starting here with the sentence that says, "she stated," and then read that sentence and the following sentence. Tell me if that's best, your best recollection, that is a correct statement.

A. Do you want me to read it out loud?

Q. Yes, sir.

A. She stated that the fee of ten thousand dollars which was paid to FUCCI was provided by JOSEPH LEARY and was in cash and that she had given the money to FUCCI. She stated that she had denied that she had paid the money and that this was the truth.

Q. All right, this was the truth, being that she denied paying the money?

A. That's correct.

Q. Now, Agent AXTON, you've just indicated to us that she stated to you that she had informed the Grand Jury that JOSEPH LEARY had been the source of the funds?

A. That's correct.

Q. Is there anything in your report that supports that? That